

Serial No. 09/359,562  
Page 7 of 15

### **REMARKS**

This response is intended as a full and complete response to the final Office Action mailed August 27, 2003. In the Office Action, the Examiner noted that claims 1-33 are pending in the application and that claims 1-33 stand rejected. By this response claims 1 and 16 are amended, and claims 2-15 and 17-33 continue unamended.

The Applicants thank the Examiner for interviewing with Applicants' attorney, Steven M. Hertzberg, on October 22, 2003 regarding this response to the Office Action. The Applicants also thank the Examiner for graciously agreeing to further interview with the Applicants upon review of this response, as required.

In view of both the amendments presented above and the following discussion, the Applicants submit that none of the claims now pending in the application are obvious under the provision of 35 U.S.C. §103. Thus, the Applicants believe that all of these claims are now in allowable form.

It is to be understood that the Applicants, by amending the claims, do not acquiesce to the Examiner's characterizations of the art of record or to Applicants' subject matter recited in the pending claims. Further, Applicants are not acquiescing to the Examiner's statements as to the applicability of the prior art of record to the pending claims by filing the instant responsive amendments. Rather, the Applicants have amended claims 1 and 16 to further clarify the scope of the Applicants' invention.

### **REJECTION OF CLAIMS UNDER 35 U.S.C. § 103**

#### **A. Claims 1-5, 8-16, and 20-33**

The Examiner has rejected claims 1-5, 8-16, and 20-33 under 35 U.S.C. §103 as being obvious over Schein et al. (U.S. Patent No. 6,268,501, issued July 17, 2001, hereinafter "Schein") in view of Smith (U.S. Patent No. 5,933,141, issued August 3, 1999). The Applicants respectfully traverse the rejection.

The Applicants have amended independent claim 1 (and similarly independent claim 16) to further clarify features that the Applicants consider as being inventive. In particular, independent claim 1, as amended, recites:

Serial No. 09/359,562

Page 8 of 15

" A program guide for an interactive information distribution system having provider equipment and subscriber equipment comprising:  
    a video layer of said program guide having at least one user selectable object, said video layer sent from said provider equipment to said subscriber equipment; and  
    a graphics layer of said program guide, where the graphics layer selectively provides emphasis and de-emphasis of said at least one user selectable object in the video layer." (emphasis added).

The test under 35 U.S.C. §103 is not whether an improvement or a use set forth in a patent would have been obvious or non-obvious; rather the test is whether the claimed invention, considered as a whole, would have been obvious. *Jones v. Hardy*, 110 U.S.P.Q. 1021, 1024 (Fed. Cir. 1984) (emphasis added). The combination of the Schein and Smith references fails to teach the Applicants' invention as a whole.

The Examiner contends that "the [Schein] guide has a video layer and a graphics layer which provide emphasis and deemphasis of objects in the video layer (for example, elements 528, 526 in FIG. 20B, 530 in FIG. 16B, and 530 in FIG. 17B)." The Examiner also contends that "the video layer has a video region and a graphical region." The Applicants respectfully disagree with this characterization.

The Applicants contend that Schein does not disclose layers at all. Rather, Schein discloses a single image having primarily a graphics region and, optionally, an inset video region. The graphics region and video region do not operate as distinct layers; rather, the graphics and video regions are respective portions of a single layer.

A program guide according to the present invention comprises both a video layer and a graphics layer. The video layer includes various user selectable objects, which are provided with emphasis and deemphasis via graphics layer manipulation. In particular, "video information representative of each of the objects or elements previously identified (2005-2055) is generated at a central processing location or head end, and transmitted as part of a video stream." (See Applicants' specification, page 37, lines 18-21.) Each manipulable (i.e., user selectable) object or element is associated with a corresponding graphical overlay element (e.g., an x-y coordinate box or other element). The overlay element (by changing its opacity, color, look, and the like) selectively emphasizes or deemphasizes an object on the screen in response to

Serial No. 09/359,562  
Page 9 of 15

manipulation of the remote control unit (see Applicants' specification, page 37, line 30 to page 38, line 4). Thus, the graphics layer of the Applicants' program guide overlays the video layer objects of the program guide, at least where such emphasis and deemphasis are to be provided to such video layer objects.

By contrast, the displayed imagery envisioned by the Schein arrangement is not layered imagery comprising video and graphics layers, as discussed in the instant application. Rather, the Schein arrangement utilizes screen regions to display graphics imagery and video imagery. The video imagery shown in Schein represents video content, such as a PPV movie, broadcasted television program, N/OD/VOD content, and the like. Such video imagery is not a part of the program guide. Specifically, there is no instance of video imagery displayed on a layer within the Schein arrangement wherein a graphics layer disposed thereover is used to perform any modifications to video layer imagery. In fact, the term "layer" is not present within the Schein patent, thereby further evidencing Applicants' contention that Schein does not disclose or suggest the layers of the present invention and, more particularly, the use of the graphics layer to emphasize or deemphasize video layer objects. There is simply no overlaying of video and graphics layers of the program guide disclosed within Schein. Thus, Schein cannot perform the claimed emphasis/deemphasis function.

As noted in the description of FIG. 3 of Schein beginning in column 8, line 28, an on-screen display controller and formatter (OSDCF) performs various functions including on-screen display controller (OSD) functions. As noted at the top of column 9, "The OSD reads high level graphic commands sent from the processor 100 and stores graphic information in the RAM. The OSD output ... graphic data which is used to generate a local video signal. Depending on the state of the user input interface ... the OSD local video output or the incoming live video will be displayed." That is, graphic information provided by the OSD will be displayed or video information from the incoming live video will be displayed. Thus, Schein teaches selectively displaying one of video and graphics imagery.

The Examiner further contends that the graphics layer and video layers in fact are overlayed as illustratively shown in FIG. 16B, such that the video image may be

Serial No. 09/359,562  
Page 10 of 15

emphasized or deemphasized based on whether it is in the forefront. The Applicants respectfully disagree with this conclusion of the teaching of Schein

Specifically, "Clicking on the remote control device automatically causes a program InfoMenu 530 to pop up on a portion of the television screen 532 (see FIG. 17B). Program InfoMenu 530 may allow the viewer to obtain more information about the currently tuned program, move to contextual linked services, or exit InfoMenu 530 back to the television show." (See Schein, column 22, lines 22-44 ) That is, the InfoMenu of FIG. 17B is nothing more than a graphical pop-up window.

Moreover, the shaded area at 530, as shown in FIG. 16B, does not teach or suggest that a graphical layer is, in fact, emphasizing a video layer. That is, nowhere in the Schein reference is there any teaching or even suggestion that the graphics layer selectively provides emphasis and deemphasis of at least one object in the video layer of the program guide. There is no disclosure whatsoever in the Schein reference that the program InfoMenu 530 interacts with any portion of the video layer in which any object within the video layer may be emphasized or deemphasized. Thus, the Schein reference is completely silent with regard to the composition of the program guide.

By contrast, the Applicants have defined their program guide as comprising two distinct layers. The first layer is a video layer provided from the service provider equipment to the subscriber equipment. This video layer includes video objects, which may be selected by a user when presented on the subscriber equipment. The second layer of the Applicants program guide is a graphics layer, which may be asserted by a user to selectively emphasize or deemphasize one of the objects in the video layer of the Applicants' program guide. Thus, the Schein reference fails to teach or suggest the Applicants' invention as a whole.

Furthermore, the Smith reference fails to bridge the substantial gap as between the Schein reference and the Applicants' invention. In particular, the Smith reference discloses that an electronic program guide (EPGC) application program 604 is running and superimposed (i.e., overlaid) on top of the television source 602. The Applicants point out that the television signal is not a component (i.e., video layer) of the program guide in the Smith reference. Rather, the television source is a video signal that is

Serial No. 09/359,562  
Page 11 of 15

separate and apart from the program guide of Smith. Nowhere in the Smith reference is there any teaching or suggestion that the program guide comprises both a video layer and a graphics layer.

Further, the Smith reference discloses that a user controllable pointer 606 is shown as positioned over completely opaque EPG entries 608. When pointer 606 is positioned over the television source 602, more EPG entries 608 are displayed in addition to the completely opaque controls of FIG. 6A, and semitransparent controls are also displayed. These controls are semitransparent so that the television source 602 is still visible to the user. Furthermore, as represented by element 610, although the grid area that is displayed over the television 602 is semitransparent, the particular information cell in that portion of the grid over which the pointer is placed is opaque (See Smith, Col. 8, lines 2-19 and FIGS. 6A and 6B).

Nowhere in the Smith reference is there any teaching, or even suggestion, that the particular information cell (object) in that opaque portion of the grid over which the pointer is placed, is produced by a graphic layer. Rather, the Smith reference is completely silent with regard to the graphics layer being overlaid a video layer object of the program guide.

Even if the two references could somehow be operably combined, the combination would merely disclose an EPG overlaying a video source, such as a television program, where sections of the EPG may be emphasized. Nowhere in the combined references is there any teaching of how the various areas of the EPG are emphasized or deemphasized. Rather, the combined references merely disclose emphasizing and deemphasizing particular regions of an EPG as an end-result, without any teaching or suggestion of how to implement such result. That is, nowhere in the combined references is there any teaching or suggestion that a graphics layer of the program guide selectively provides emphasis and deemphasis of at least one user selectable object in the video layer of the program guide. Therefore, the combination of Schein and Smith fails to teach the Applicants' invention as a whole.

As such, the Applicants submit that claim 1 is not obvious and fully satisfies the requirements of 35 U.S.C. §103 and is patentable thereunder. Likewise, independent

Serial No. 09/359,562  
Page 12 of 15

claim 16 recites similar limitations as recited in independent claim 1. As such, and for at least the same reasons as discussed above, the Applicants submit that independent claim 16 is not obvious and fully satisfies the requirements of 35 U.S.C. §103 and is patentable thereunder. Furthermore, claims 2-5, 8-15, and 20-33 respectively depend from independent claims 1 and 16 and recite additional limitations thereof. As such, and for at least the same reasons discussed above, the Applicants submit that these dependent claims are also not obvious and fully satisfy the requirements of 35 U.S.C. §103 and are patentable thereunder. Therefore, the Applicants respectfully request that the rejections be withdrawn.

B. Claims 6-7 and 17-19

The Examiner rejected claims 6-7 and 17-19 as being obvious under 35 U.S.C. §103 over the Schein patent in view of Smith and Blonstein et al. (U.S. Patent No. 6,016,144, issued January 18, 2000, hereinafter "Blonstein"). The Applicants respectfully traverse the rejection.

Claims 6 and 7 and 17-19 respectively depend from independent claims 1 and 16, and recite additional limitations thereof. For example, dependent claim 6, when combined with independent claim 1, recites:

"A program guide for an interactive information distribution system having provider equipment and subscriber equipment comprising:  
a video layer of said program guide having at least one user selectable object, said video layer sent from said provider equipment to said subscriber equipment; and  
a graphics layer of said program guide, where the graphics layer selectively provides emphasis and de-emphasis of said at least one user selectable object in the video layer." (emphasis added).

The test under 35 U.S.C. §103 is not whether an improvement or a use set forth in a patent would have been obvious or non-obvious; rather the test is whether the claimed invention, considered as a whole, would have been obvious. *Jones v. Hardy*, 110 U.S.P.Q. 1021, 1024 (Fed. Cir. 1984) (emphasis added). The combination of Schein, Smith, and Blonstein fails to teach or suggest the Applicants' invention as a whole.

Serial No. 09/359,562  
Page 13 of 15

As discussed above, the combination of the Schein and Smith fails to teach or suggest a graphics layer "wherein the graphics layer provides emphasis and deemphasis of at least one user selectable object in the video layer of the program guide. Rather, the Schein reference merely discloses utilizing screen regions to display graphics imagery and video imagery, where the video imagery is not associated, or does not form a layer of the program guide. Further the Smith reference merely discloses that a portion of the EPG may be emphasized, without teaching or suggesting how to implement such emphasizing and deemphasizing. That is there is no correlation between the graphics imagery and the video imagery of the program guide, such that the graphics layer provides emphasis and deemphasis of an object or objects in the video layer. There is simply no overlaying of graphics and video layers of a program guide disclosed in either the Schein or Smith references. Rather, the combined references merely disclose sending video content associated with a broadcasted television signal along with a program guide composed of a single graphical layer. Nowhere in the combined references is there any teaching or suggestion that the program guide comprises both a video layer (e.g., icons) and a graphical layer (e.g., the highlighting layer over the selected icons).

Furthermore, the Blonstein reference fails to bridge the substantial gap as between the Schein and Smith references, and the Applicants' invention. In particular, Blonstein discloses a graphical user interface (GUI) to produce a multilayered graphical presentation. Specifically, the Blonstein arrangement utilizes a graphics processing engine to generate two graphics planes including, in one mode of operation, a transparent layer which exposes graphical buttons produced in a lower graphics layer. However, the Blonstein reference does not teach or suggest a video layer of the program guide, nor does it teach or suggest a video layer in which video objects are emphasized or deemphasized by a graphics layer of the same program guide. Rather, Blonstein is entirely directed towards graphics processing within the context of a graphical user interface, and not to a mixed video and graphics layer processing as claimed by the Applicants in claim 6.

Serial No. 09/359,562  
Page 14 of 15

As noted by the Examiner, "Schein et al. do not specifically show the masking and revealing an object." The Applicants agree with this, since such masking and revealing require a masking layer. However, to the extent that Schein shows any changing of opacity and emphasis of an object, such object comprises a graphics region object and not a video region object, and certainly not a video layer object. Moreover, Smith merely discloses an emphasized region, but does not teach or suggest how to implement such emphasized region. Blonstein does show masking and revealing of a lower graphics layer object using a higher graphics layer. However, there is no teaching or suggestion of using a video layer, and certainly no teaching or suggestion of masking and revealing video layer objects of the program guide by a graphics layer of the very same program guide.

Thus, either singly or in any allowable combination, the Schein, Smith, and Blonstein arrangements fail to disclose or suggest the emphasis/deemphasis (or masking/revealing) of a video layer object using a graphics layer. The references are directed to graphics region (Schein) or layer (Blonstein) processing only and do not teach or suggest the claimed invention. Therefore, the Applicants submit that claims 6-7 and 17-19, as they now stand, fully satisfy the requirements of 35 U.S.C. §103 and are patentable thereunder.




Serial No. 09/359,562  
Page 15 of 15

CONCLUSION

Thus, the Applicants submit that none of the claims, present / in the application are obvious under the provisions of 35 U.S.C. §103. Consequently the Applicants believe that all these claims are presently in condition for allowance. Accordingly, both reconsideration of this application and its swift passage to issue are earnestly solicited.

If, however, the Examiner believes that there are any unresolved issues requiring adverse final action in any of the claims now pending in the application, it is requested that the Examiner telephone Steven M. Hertzberg or Eamon J. Wall at (732) 530-9404 so that appropriate arrangements can be made for resolving such issues as expeditiously as possible.

Respectfully submitted,

  
\_\_\_\_\_  
Eamon J. Wall, Attorney  
Reg. No. 39,414

Dated: 10/27/03

CUSTOMER #26,291  
MOSER PATTERSON & SHERIDAN, LLP  
595 Shrewsbury Avenue, Suite 100  
Shrewsbury, New Jersey 07702  
732-530-9404 - Telephone  
732-530-9808 - Facsimile

**RECEIVED**  
**CENTRAL FAX CENTER**  
OCT 27 2003

**OFFICIAL**